

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

GAYLORD CASH NEAL, SR.,	:	
	:	CIVIL ACTION
<i>Plaintiff</i>	:	
	:	NO. 02-4374
vs.	:	
	:	
GOVERNOR MARK SCHWEIKER, <i>et al.</i>	:	
	:	
<i>Defendant</i>	:	

ORDER

AND NOW, this ____ day of _____, 2003, the above-captioned suit as to Judicial defendants, the Honorables John O'Grady and Benjamin Lerner, is dismissed for failure to state a claim upon which relief can be granted.

BY THE COURT:

J.

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	:	
<i>Defendant</i>	:	

JUDICIAL DEFENDANTS' MOTION TO DISMISS

AND NOW, Philadelphia Court of Common Pleas Judges John O'Grady and Benjamin Lerner, by their attorney, David M. Donaldson, Esquire, respectfully requests that this Honorable Court dismiss the above-captioned suit as to them for failure to state a claim upon which relief can be granted, and for the same reasons for which this Court has dismissed the suit as to the other defendants, the District Attorney of Philadelphia and the former Governor of Pennsylvania.

Respectfully submitted,

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*Counsel for Defendants,
Honorable John J. O'Grady, Jr.,
and Honorable Benjamin Lerner*

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	:	
<i>Defendant</i>	:	

**MEMORANDUM OF LAW IN SUPPORT OF
JUDICIAL DEFENDANTS' MOTION TO DISMISS**

I. INTRODUCTION

Plaintiff, Gaylord Cash Neal, Sr., who alleges he is a twice-convicted felon, has sued the former Governor, the District Attorney of Philadelphia and two Court of Common Pleas Judges for "falseness of certification perpetuated for thirty (30) years." Paragraph 1 of Complaint.

Upon Motions to Dismiss, this Court has already dismissed the suit as to the District Attorney and the former Governor for failure to state a claim; and plaintiff has appealed the dismissal. For the same reasons that plaintiff's complaint as to the District Attorney and former Governor was dismissed, the complaint as to the two Judges should be dismissed. Plaintiff seeks no relief as to the Judges.

II. ARGUMENT

As usual with plaintiff's complaints, it is very difficult to discern the relief he seeks. It would seem, from the District Attorney's perspective to be *habeas corpus*, in which the District Attorney, not the state court Judges have the advocacy interest. In any event, since plaintiff seeks no relief as to the Judges, and for the same reasons as this Court dismissed the suit for

failure to state a claim as to the District Attorney and the former Governor (see attached Opinion for ease of reference), the state court Judges ask that this suit be dismissed as to them

Respectfully submitted,

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	:	
<i>Defendant</i>	:	

CERTIFICATE OF SERVICE

The undersigned counsel hereby certifies that on May 6, 2003, he personally caused to be served upon the following a true and correct copy of the foregoing *Motion to Dismiss*, filed on behalf of the Honorable John J. O'Grady, Jr., and the Honorable Benjamin Lerner, by mailing same first class, postage pre-paid, U.S. mail to:

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